

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Edwin Peña	Team: Team # 5	CCRB Case #: 200603124	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/10/2005 , Saturday, 12/24/2005 1:00 AM, Friday, 01/13/2006 , Friday, 03/10/2006	Location of Incident: In front of § 87(2)(b) [REDACTED]	Precinct: 101	18 Mo. SOL 6/24/2007	EO SOL 6/24/2007	
Date/Time CV Reported Mon, 03/13/2006 9:55 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/13/2006 9:55 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. SGT Carlos Fabara	01279	922317	101 PCT
3. POM Matthew Handlesman	12644	932771	101 PCT
4. LT Jason Schleyer	00000	904154	101 PCT
5. POM John Chavatte	12920	934619	101 PCT
6. POM Brian Kearney	31623	930457	101 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Cortney Cummings	13858	928136	101 PCT
2. SGT Patrick Oneill	05092	895806	101PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM John Chavatte	Abuse: On December 24, 2005, PO John Chavatte drew his gun.	[REDACTED]
B.POM Brian Kearney	Abuse: On December 24, 2005, PO Brian Kearney drew his gun.	[REDACTED]
C.POM John Chavatte	Abuse: On December 24, 2005, PO John Chavatte entered and searched § 87(2)(b) [REDACTED] in Queens.	[REDACTED]
D.POM Brian Kearney	Abuse: On December 24, 2005, PO Brian Kearney entered and searched § 87(2)(b) [REDACTED] in Queens.	[REDACTED]
E. Officers	Abuse: On December 24, 2005, officers forcibly entered and searched § 87(2)(b) [REDACTED] in Queens.	[REDACTED]
F.SGT Carlos Fabara	Force: On January 13, 2006, SGT Carlos Fabara used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
G.POM Matthew Handlesman	Force: On January 13, 2006, PO Matthew Handlesman struck § 87(2)(b) with a radio.	
H.POM Matthew Handlesman	Force: On January 13, 2006, PO Matthew Handlesman used physical force against § 87(2)(b)	
I.LT Jason Schleyer	Discourtesy: On March 10, 2006, LT Jason Schleyer spoke obscenely and/or rudely to § 87(2)(b)	

Synopsis

On March 13, 2006, § 87(2)(b) contacted the CCRB to file a complaint regarding three dates against members of the New York City Police Department on behalf of her son, § 87(2)(b) partially witnessed the incident that took place on December 24, 2005. She did not witness the two other incidents.

§ 87(2)(b) stated that on December 24, 2005, a group of uniformed officers forcibly entered and searched § 87(2)(b)'s home, which is located at § 87(2)(b) in Queens. At the time of his CCRB interview, § 87(2)(b) claimed that an unidentified officer was holding a gun. During the course of this investigation, it was established that PO John Chavatte and PO Brian Kearney, who are assigned to the 101st Precinct, were among the responding officers who forcibly entered § 87(2)(b)'s home after § 87(2)(b) reported that he had shot someone inside his home. The officers also admitted that they had their firearms drawn to their sides (Allegations A,B,C,D and E).

§ 87(2)(g) § 87(2)(b) also alleged that on January 13, 2006, for no apparent reason, he was approached by Sgt. Carlos Fabara, who pushed him and following this push, PO Matthew Handlesman struck him in the head with his police radio and pushed him as well (Allegations F, G and H). At the time of this incident, Sgt. Fabara was assigned to the 101st Precinct. He is currently assigned to the Police Academy. § 87(2)(g)

§ 87(2)(b) claimed that on March 10, 2006, Lt. Jason Schleyer, who is assigned to the 101st Precinct addressed him in a profane manner at the time of his arrest. § 87(2)(g)

This case was originally assigned to Investigator Sara Hager on March 14, 2006 and reassigned to ASI Edwin Pena on March 9, 2007.

Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on April 3, 2006. (Encl. 8A-8C) § 87(2)(b) is a § 87(2)(b)-old black male.

On December 24, 2006, at approximately 1:00 a.m., § 87(2)(b) arrived at his home, which is located at § 87(2)(b) in Queens, after returning from a party. § 87(2)(b) indicated that he resides on the § 87(2)(b) floor of a four family apartment building. § 87(2)(b) was admittedly drunk and under the influence of narcotics at the time he returned to his home. § 87(2)(b) was about to get in the shower when he heard banging on his front door. § 87(2)(b) approached the door and observed that a group of officers was standing outside. § 87(2)(b) opened the door and an unidentified officer was holding a gun. § 87(2)(b) raised his arms and backed up. At this point, approximately 20 officers entered his home. Three of these officers pushed § 87(2)(b) to the ground. The officer that pointed his gun at § 87(2)(b) put his knee in his back and asked him where the gun was. § 87(2)(b) informed the officer that he was not in possession of a gun. Officers began searching the house, looking in the couch and in the cabinets. As the officers searched the home, § 87(2)(b)'s mother, § 87(2)(b) his girlfriend, § 87(2)(b) and his two small children, § 87(2)(b) and § 87(2)(b) came down from the second floor. § 87(2)(b) and § 87(2)(b) were yelling and cursing at officers. At one point, § 87(2)(b) took § 87(2)(b) and § 87(2)(b) next door to stay with his grandmother. § 87(2)(b) continued yelling and cursing at officers who were telling her to calm down. The officers told § 87(2)(b) they had probable cause to enter and search the apartment. However, the officers did not elaborate. The officers searched the apartment for approximately 20 minutes, but did not find any weapons. § 87(2)(b) admittedly cursed at the officers throughout the incident. § 87(2)(b) and § 87(2)(b) were subsequently transported to the 101st Precinct. § 87(2)(b) was released from the stationhouse without being issued a summons. § 87(2)(b) was issued a § 87(2)(b)

§ 87(2)(b) summons. § 87(2)(b)

On January 13, 2006, at approximately 8:30 p.m., § 87(2)(b) left his home to go to a nearby store. § 87(2)(b) was wearing a "United Potsmokers" t-shirt, black leather jacket and boots. As he exited his home, he observed two officers (identified through investigation as PO Matthew Handlesman and SGT Carlos Fabara) approach and frisk § 87(2)(b) and two individuals known to § 87(2)(b) as § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated that the four aforementioned individuals were smoking marijuana in public at the time the officers approached them. As § 87(2)(b) walked away from the scene, PO Handlesman told him to come back. § 87(2)(b) responded that he did not have anything to do with what was going on and continued walking. SGT Fabara walked up to him and pushed him in the chest. § 87(2)(b) fell backward against the unmarked black police vehicle that the officers were driving. § 87(2)(b) stated that he extended his arms to balance himself, but he did not make physical contact with the officers. For no apparent reason, PO Handlesman hit him behind the right ear with a flashlight and pushed him back against the vehicle. § 87(2)(b) did not sustain any injuries as a result of this action. SGT Fabara approached and handcuffed § 87(2)(b) who was transported to the 101st Precinct. § 87(2)(b) was charged with § 87(2)(b).

On March 10, 2006, at approximately 8:30 p.m., § 87(2)(b) went to a Chinese restaurant in the vicinity of Central Avenue and Nameoke Street in Queens. § 87(2)(b) was wearing jeans, a white sweatshirt and sneakers. § 87(2)(b) saw his friend § 87(2)(b) (last name unknown) and they stopped to talk. They shook hands then § 87(2)(b) put his hands in his sweatshirt. They were talking approximately five to six minutes when a marked police car drove up. An officer (who was identified through investigation as PO Cortney Cummings) stepped out of the passenger side of the vehicle and asked § 87(2)(b) and § 87(2)(b) for their identification. § 87(2)(b) and § 87(2)(b) were compliant and provided their identification to the officer. Another officer (identified through investigation as LT Jason Schleyer) stepped out of the driver side of the vehicle, grabbed § 87(2)(b) by the hood of his sweatshirt and slammed him against the trunk of the police car. § 87(2)(b) asked what the problem was and LT Schleyer responded, "Stop being a fucking wiseass." LT Schleyer handcuffed § 87(2)(b) who asked him why he was being arrested. LT Schleyer again responded that he was being a "wiseass." LT Schleyer searched § 87(2)(b). § 87(2)(b) did not have any further conversation with the officers. § 87(2)(b) was transported to the 101st Precinct where he was issued a summons for § 87(2)(b).

§ 87(2)(b) stated that in an unspecified period of time, he had received about 10 summonses for § 87(2)(b) but only wished to pursue complaints regarding these three incidents.

Results of Investigation

Attempts to witnesses

During the course of this investigation, the CCRB attempted to contact the witnesses to the incidents for which § 87(2)(b) provided contact information. However, these attempts proved to be fruitless.

December 24, 2005 Incident:

Stop and Frisk Report 2005-101-00251

PO John Chavatte prepared a stop and frisk report to document § 87(2)(b)'s stop. PO Chavatte indicated that § 87(2)(b) was stopped because he was suspected of discharging a firearm. PO Chavatte indicated that the stop took place at § 87(2)(b) at approximately 12:59 a.m. and it lasted fifteen minutes. The report revealed that § 87(2)(b) was frisked and searched, placed on the ground and handcuffed. (Encl. 9A-9B)

PO John Chavatte

PO John Chavatte was interviewed at the CCRB on August 29, 2006. (Encl. 11A-11B) PO Chavatte is a § 87(2)(b) year-old white male. On December 24, 2005, PO Chavatte was assigned to perform patrol duties within the confines of the 101st Precinct. PO Chavatte performed his duties in uniform from 11:15 p.m. to 7:50 a.m.

PO Brian Kearney acted as his partner on this date. PO Chavette indicated in his memo book entries that at 12:40 a.m., he responded to a radio run of shots fired at § 87(2)(b), where he detained § 87(2)(b) at § 87(2)(b) in order to investigate the incident. At 12:59 a.m., § 87(2)(b) was transported to the 101st Precinct stationhouse. At 1:10 a.m., PO Chavette prepared a stop and frisk report regarding this incident and released § 87(2)(b) from police custody. (Encl. 10A-10C)

At approximately 12:40 a.m., PO Chavatte and PO Kearney responded to § 87(2)(b) to investigate possible shots fired at this address. Upon their arrival, PO Chavatte PO Chavatte approached an unidentified black female standing outside the apartment complex. This female stated that § 87(2)(b) (she identified him by name to the officers) had shot at her and stated that he lived on the second floor of the apartment building. Shortly after this conversation, Sgt. Patrick O'Neil and other unidentified uniformed officers also responded to the scene.

When all the officers responded to § 87(2)(b)'s apartment, the latter answered the door, the officers instructed him to show his hands. § 87(2)(b) refused and attempted to close the door. PO Kearney and PO Chavatte, whom had their weapons drawn and down at their sides, pushed their way into the apartment. The officers attempted to grab his arms, but § 87(2)(b) was not compliant and flailed his arms. There was a couch right next to the front door and in the struggle to gain control of § 87(2)(b)'s hands, he and the officers fell over the couch. PO Chavatte did not recall which officers fell over the couch. While on the floor, § 87(2)(b) continued to struggle and refused to put his arms behind his back. PO Kearney and PO Chavatte were able to restrain his arms and he was handcuffed. Immediately after he was cuffed, PO Chavatte frisked and searched § 87(2)(b) for weapons. No weapons were found. PO Chavatte visually inspected § 87(2)(b)'s grabble area for weapons, but did not conduct a substantive search. § 87(2)(b) was verbally disruptive by cursing at the officers. SGT O'Neil instructed PO Kearney and PO Chavatte to remove § 87(2)(b) because some individuals who had gathered outside the apartment building were getting rowdy. The officers detained and transported § 87(2)(b) back to the 101st Precinct stationhouse. Later at the stationhouse, SGT O'Neil informed PO Chavatte that the incident was deemed unfounded and instructed him to release § 87(2)(b).

PO Brian Kearney

PO Kearney was interviewed at the CCRB on July 12, 2006. (Encl 13A-13B) PO Kearney is a § 87(2)(b)-old white male.

On December 24, 2005, PO Kearney was assigned to performed patrol duties within the confines of the 101st Precinct. PO Kearney performed his duties in uniform from 11:15 p.m. to 7:50 a.m. PO John Chavatte acted as his partner on this date. PO Kearney indicated in his memo book entries that at 12:40 a.m., he responded to a radio run of possible shots fired at § 87(2)(b). At 12:59 a.m., § 87(2)(b) was arrested by PO Chavatte. At 1:10 a.m., PO Chavatte prepared a stop and frisk report after it was established that shots had not been fired at the scene. At 1:22 a.m., § 87(2)(b) was released from police custody. (Encl. 12A-12C)

At approximately 12:40 a.m., PO Kearney and PO Chavatte responded to a radio run of shots fired at § 87(2)(b). Upon arrival, the officers spoke with an unidentified female who claimed to be § 87(2)(b)'s neighbor. PO Kearney did not recall if she said that § 87(2)(b) had pointed a gun or shot at her. PO Kearney, PO Chavatte, SGT Patrick O'Neil and other unidentified officers went to § 87(2)(b)'s apartment. PO Kearney had his gun drawn and at his side. PO Kearney stated it was procedure to have his gun drawn in that situation for his own safety. PO Kearney did not recall if any other officers had their guns drawn. When § 87(2)(b) opened the door the officers immediately grabbed his arms so he could not reach for a gun. § 87(2)(b) resisted being handcuffed by tensing his arms and refusing to place them behind his back. An unidentified officer handcuffed § 87(2)(b). PO Kearney did not recall § 87(2)(b) falling backward over a couch, being thrown to the ground or being on the ground at any point. An unknown number of family members appeared and started screaming at the officers demanding what was going on. While in the apartment, PO Kearney looked in around the immediate room for a weapon but did not find anything. He did not witness other officers searching the apartment. SGT O'Neil instructed PO Kearney and PO Chavatte to take § 87(2)(b) to the 101st Precinct stationhouse to investigate the incident.

At the stationhouse, SGT O'Neil informed PO Kearney that he had conducted the investigation with negative results. PO Chavatte prepared a stop and frisk report to document this incident and released § 87(2)(b)

SGT Patrick O'Neill

SGT O'Neill was interviewed at the CCRB on September 28, 2006. (Encl. 15A-15B) SGT O'Neill is a § 87(2)(b) year-old white male. On December 24, 2005, SGT O'Neill was assigned as the 101st Precinct's patrol supervisor. SGT O'Neill performed his duties in uniform from 5:20 p.m. to 6:17 a.m. SGT. O'Neill did not have a partner on this day. In his memo book entries, SGT O'Neill indicated that at 1:00 a.m., the investigation into the "shots fired" radio run at § 87(2)(b) was deemed the incident as unfounded. (Encl. 14A-14B)

At approximately 1:00 a.m., SGT O'Neill responded to § 87(2)(b) regarding a radio run of shots fired at this location. Upon his arrival, SGT O'Neill observed a large crowd of civilians and several uniformed officers at the scene. SGT O'Neill approached PO Chavatte, who was standing next to a handcuffed § 87(2)(b) PO Chavatte, who informed him that § 87(2)(b) had attempted to run into the apartment as they tried to speak to him regarding the shots fired radio run and several young females attempted to stop the officers from arresting him. SGT O'Neill instructed PO Chavatte to transport § 87(2)(b) to the stationhouse until the incident could be investigated.

SGT O'Neill conducted a canvass at the scene. He spoke to people about the alleged shooting and searched the area for shell casings and secondary hits. Nothing was found and the call was unfounded. § 87(2)(b) was released from the 101st Precinct stationhouse after a stop and frisk report was filed to document this incident. § 87(2)(b)

January 13, 2006 Incident:

SGT Carlos Fabara

SGT Fabara, a § 87(2)(b)-old Hispanic male, was interviewed at the CCRB on August 10, 2006. (Encl. 16A-16B) SGT Fabara was 5'11" tall and weighed 185 pounds. On January 13, 2006, SGT Fabara was assigned as the 101st Precinct's anti-crime unit supervisor. SGT Fabara performed his duties in plainclothes from 5:26 p.m. to 2:10 a.m. PO Matthew Handelsman acted as his operator on this day. Because SGT Fabara had misplaced his memo book before he was scheduled to be interview, he was unable to provide it to the investigator.

At approximately 8:30 p.m., SGT Fabara and PO Handelsman were speaking with several unidentified black males on § 87(2)(b) in Brooklyn, when they observed § 87(2)(b) in a physical altercation with another unidentified male a few yards away. The officers approached the men and asked for their identifications. § 87(2)(b) became belligerent and was uncooperative. He was yelling, "Fuck you. I don't have to give you anything." § 87(2)(b) refused to provide his identification to the officers. While the officers were attempting to calm down § 87(2)(b) the unidentified individual left the area. SGT Fabara could not recall how many times § 87(2)(b) was asked for identification. Because § 87(2)(b) repeatedly refused to provide the officers with identification, SGT Fabara informed him that he would be arrested. One of the officers, SGT Fabara could not recall whom, attempted to handcuff § 87(2)(b). When § 87(2)(b) realized that he was going to be placed under arrest, his posture became aggressive in that he was tensing his arms and appeared to be in a fighting stance. The officers attempted to grab his arms and place them behind his back, but his arms were tensed, preventing them from doing so. SGT Fabara could not estimate how long it took to handcuff § 87(2)(b). Sgt. Fabara stated that § 87(2)(b) was never pushed in the chest nor was he hit with a flashlight, punched in the head or hit with any blunt object. § 87(2)(b) was continually cursing at the officers and uncooperative.

On Line Booking Sheet (OLBS) regarding § 87(2)(b)'s arrest

The OLBS indicated that on January 13, 2006, PO Matthew Handlesman arrested and charged § 87(2)(b) with § 87(2)(b) (Encl. 17A-17C)

PO Matthew Handelsman

PO Matthew Handelsman, a § 87(2)(b) -old white male, was interviewed at the CCRB on July 25, 2006. (Encl. 19A-19B) PO Handelsman was 6'1 tall and weighed 185 pounds. PO Handelsman resigned from the New York City Police Department on January 7, 2007. On January 13, 2006, PO Handelsman was assigned to the 101st Precinct's anti-crime unit. PO Handelsman acted as SGT Fabara's operator from 5:30 p.m. to 2:05 a.m. PO Handelsman was in plainclothes and assigned to an unmarked black Chevy Impala. PO Handelsman indicated in his memo book entries that he made an arrest at 8:43 p.m. (Encl. 18A-18B)

§ 87(2)(g)

After witnessing § 87(2)(b) and an unidentified individual fight in public, the officers approached them and asked them to walk towards them. § 87(2)(b) complied and walked to the officers but the other male walked away. The other individual was not pursued because PO Handelsman did not want to leave SGT Fabara alone. PO Handelsman asked § 87(2)(b) for his identification. PO Handelsman was going to issue § 87(2)(b) a § 87(2)(b) summons for fighting in public. § 87(2)(b) replied, "Fuck you." PO Handelsman told § 87(2)(b) that he just needed identification to write the summons and wanted to make things easy. § 87(2)(b) replied, "Fuck you, I'm not giving you shit." PO Handelsman asked for identification again and § 87(2)(b) again refused. PO Handelsman attempted to grab one of § 87(2)(b)'s arms, but he pulled away and tried to punch PO Handelsman. The punch missed PO Handelsman and § 87(2)(b) began pushing him. § 87(2)(b) continued pushing PO Handelsman and flailing his arms in an attempt not to be handcuffed. SGT Fabara and PO Handelsman attempted to restrain his arms. The "scuffle" lasted approximately 15 seconds. § 87(2)(b) had to be pinned against a car to successfully be handcuffed. After § 87(2)(b) was handcuffed he was physically compliant but continued to curse at the officer all the way to the 101st Precinct.

March 10, 2006 Incident:

LT Jason Schleyer

LT Jason Schleyer was interviewed at the CCRB on February 14, 2007. (Encl. 24A-24B) Lt. Schleyer is a § 87(2)(b) -old white male. On March 10, 2006, LT Schleyer was working as the 101st Precinct's Special Operations supervisor. He performed his duties in uniform from 4:00 p.m. to 12:35 a.m. PO Courtney Cummings acted as his operator on this day. LT Schleyer's memo book entry was consistent with his CCRB statement. (Encl. 23A-23B)

At approximately 9:00 p.m., LT Schleyer and PO Cummings were conducting routine patrol in the vicinity of Nameoke Street and Central Avenue, when they observed § 87(2)(b) and approximately four unidentified individuals acting in a loud and boisterous manner. PO Cummings, who was the recorder, instructed the males to disperse from the area and the officers drove away. A short time later, LT Schleyer could not recall how long, they returned and the males had not left. When they parked the car, one or two of the males left the area leaving § 87(2)(b) and another unidentified individual. While still inside the vehicle, PO Cummings and § 87(2)(b) had what LT Schleyer described as a "combative" exchange, but he did not hear what was said. PO Cummings exited the vehicle and in response LT Schleyer exited as well. When he got around the vehicle to the passenger side he saw § 87(2)(b) clench his fist and lean in toward PO Cummings and from this body language LT Schleyer thought he was going to punch PO Cummings. LT Schleyer grabbed § 87(2)(b)'s arm or shoulder and placed him on the back of the police car so the front of his body was on the trunk of the vehicle. When LT Schleyer grabbed § 87(2)(b) he stiffened his body as was not physically compliant which is why he placed him on the car. LT Schleyer did not curse at § 87(2)(b) or call him a "wiseass." The other individual that was there had no interaction in the incident. There were other people that were gathering and starting to yell, so LT Schleyer wanted § 87(2)(b) to get out of the area as soon as possible.

At the end of the interview LT Schleyer added that § 87(2)(b) is well known in the precinct as a person that sells narcotics in this incident location. § 87(2)(b) is also tentatively identified at the

shooter in an open homicide investigation.

Summons #§ 87(2)(b)

Summons number § 87(2)(b) indicates that PO Cortney Cummings issued § 87(2)(b) this summons for violating § 87(2)(b) on March 10, 2006. (Encl. 20A)

PO Cortney Cummings

PO Cortney Cummings was interviewed at the CCRB on February 2, 2006. (Encl. 22A-22B) PO Cortney is § 87(2)(b)-old black female. On March 10, 2006, PO Cortney Cummings was assigned as LT Jason Schleyer's operator. PO Cummings performed her duties in uniform from 9:00 a.m. to 11:35 p.m. The entries made by PO Cummings in her memo books are consistent with her CCRB interview. (Encl. 21A-21B)

At approximately 9:00 p.m., PO Cummings and LT Schleyer were conducting routine patrol when they observed § 87(2)(b) acting in a belligerent and disruptive manner at the corner of Central Avenue and Nameoke Street in Queens. § 87(2)(b) was yelling, cursing and pacing from the sidewalk into the street blocking pedestrian and vehicular traffic. § 87(2)(b) was with two to three other males but they did not seem to be acting in a disorderly manner. PO Cummings and LT Schleyer instructed § 87(2)(b) to leave the area and they drove away. They drove around the block and less than five minutes later came back and § 87(2)(b) was still there and acting in a belligerent manner. LT Schleyer stopped the vehicle and they exited the vehicle. They again instructed § 87(2)(b) to leave, to which he told PO Cummings to "suck [his] dick." He continued spitting and making rude statements such as "I don't have to do shit." Once it became apparent that § 87(2)(b) was not going to comply and leave the area, PO Cummings instructed § 87(2)(b) to place his hands on the police car and he refused to comply. LT Schleyer grabbed § 87(2)(b)'s hands and handcuffed him. PO Cummings could not recall if she assisted in handcuffing § 87(2)(b). PO Cummings did not remember LT Schleyer putting him on a police vehicle. She did not recall LT Schleyer using any discourteous language or calling § 87(2)(b) a "wiseass." PO Cummings denied doing so herself. § 87(2)(b) was transported to the 101st Precinct and released with a summons for § 87(2)(b).

Police Documents

December 24, 2005:

SPRINT report § 87(2)(b)

Sprint report § 87(2)(b) revealed that on December 24, 2005, units assigned to the 101st Precinct responded to § 87(2)(b) in regards to a 911 made by § 87(2)(b). The report also indicated that § 87(2)(b) was arrested at the scene. (Encl. 25A-25E)

101 Precinct's Command Log entries regarding § 87(2)(b) and § 87(2)(b)'s arrests on December 24, 2005.

The entries made on the Command Log regarding § 87(2)(b)'s arrest indicate that at approximately 12:59 a.m., he was arrested and charged with § 87(2)(b) by PO Chavatte. § 87(2)(b) was released from the stationhouse at 1:15 a.m. after a stop and frisk report was prepared. The entries also indicate that § 87(2)(b) was arrested at § 87(2)(b) by PO Maureen Poscillo for § 87(2)(b). § 87(2)(b) was subsequently released with a criminal court summons. (Encl. 26A)

January 13, 2006:

101 Precinct's Command Log entries regarding § 87(2)(b) arrest on January 13, 2006.

The entries made on the Command Log regarding § 87(2)(b)'s arrest indicate that at approximately 8:35 p.m., he was arrested and charged with § 87(2)(b) by PO Handlesman. § 87(2)(b)'s physical condition was listed as "normal." (Encl. 28A)

March 10, 2006:

101 Precinct's Command Log entries regarding § 87(2)(b) arrest on January 13, 2006.

The entries made on the Command Log regarding § 87(2)(b)'s arrest indicate that at approximately 9:07 p.m., he was arrested and charged with § 87(2)(b) by PO Cummings. § 87(2)(b)'s physical condition was listed as "normal." § 87(2)(b) was released from police custody after he was issued a criminal court summons. (Encl. 28B)

Civilian Criminal Conviction History

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

CCRB Histories

This is the only case on file for § 87(2)(b) and § 87(2)(b) (Encl. 5A-6A)

PO John Chavatte

In CCRB case number 200603254, allegations of force, abuse of authority and discourtesy were substantiated against PO Chavatte. The CCRB recommended charges in regard to this case. The NYPD disposition in regard to this case was unavailable. PO Chavatte does not have any other substantiated allegation in his two years with the NYPD. (Encl. 4A)

PO Brian Kearney

PO Kearney does not have any substantiated allegations on his record after being with the NYPD for four years. (Encl. 4B)

Sgt. Carlos Fabara

In CCRB case number 200508693, allegations of abuse of authority were substantiated against Sgt. Fabara. The CCRB recommended charges in regard to this case. The NYPD imposed instructions regarding this case. In CCRB case number 200511684, allegations of abuse of authority were substantiated against the officer. The CCRB recommended charges in regard to this case. The NYPD disposition in this case was unavailable. In CCRB case number 200512992, allegations of abuse of authority were substantiated against Sgt. Fabara. The CCRB recommended charges in regard to this case. The NYPD disposition in this case was unavailable. In case number 200606723, allegations of abuse of authority were substantiated against Sgt. Fabara. The CCRB recommended charges in regard to this case. The NYPD disposition in this case was unavailable. Sgt. Fabara has been a member of the NYPD for eight years. (Encl. 4C-4F)

Lt. Jason Schleyer

Lt. Schleyer does not have any substantiated allegations on his record after being with the NYPD for thirteen years. (Encl. 4G)

Conclusions and Recommendations

Officer Identification

PO Kearney was identified as a subject officer in the December 24, 2005 incident from stop and frisk report that he prepared for § 87(2)(b) following his detainment. PO Kearney identified PO Chavatte as his partner at the time of this incident. At the time of their CCRB interviews, both officers testified that they drew their firearms before entering § 87(2)(b)'s apartment with a large number of unidentified officers. § 87(2)(g) Regarding the January 13, 2006, the CCRB identified PO Handlesman as a possible subject officer through the OLBS that he prepared regarding § 87(2)(b)'s arrest. At the time of his CCRB interview, PO Handlesman § 87(2)(g) identified Sgt. Fabara as his partner. § 87(2)(g) Lt. Schleyer was identified as the subject officer of the discourtesy said to § 87(2)(b) on March 10, 2006, through the physical description provided by the latter at the time of his interview. § 87(2)(g)

Disputed Facts

§ 87(2)(g)

Undisputed Facts

It is not in dispute that on December 24, 2005, PO Chavette and PO Kearney drew their firearms and entered § 87(2)(b)'s home after one of his neighbors reported that he had shot an individual inside his home.

Assessment of the Evidence

For the December 24, 2006 incident, the SPRINT report supports the officers' statements that there was a call of shots fired and § 87(2)(b) was identified as the alleged suspect. PO Chavette and PO Kearney entered the apartment with their guns drawn and detained § 87(2)(b) until it was established that the incident had not taken place.

§ 87(2)(g)

§ 87(2)(g)

Allegation A: On December 24, 2005, PO John Chavatte drew his gun.

Allegation B: On December 24, 2005, PO Brian Kearney drew his gun.

Allegation C: On December 24, 2005, PO John Chavatte entered and searched § 87(2)(b)

in Queens.

Allegation D: On December 24, 2005, PO Brian Kearney entered and searched § 87(2)(b)

in Queens.

Allegation E: On December 24, 2005, officers forcibly entered and searched § 87(2)(b)

in Queens.

On December 24, 2005, § 87(2)(b), called 911 and stated that § 87(2)(b) had shot someone inside his home, which is located at § 87(2)(b) in Queens. PO Chavatte and PO Kearney, who were among a group of responding officers, responded to § 87(2)(b)'s home with their weapons drawn to investigate the alleged incident. In Police Department v. Gliner, OATH Index 955/00, Administrative Law Judge Ray Fleischacker states, "The policy of the Department is that an officer can draw his firearm and point it at another person so long as he has reasonable fear for his own safety or another's personal safety. (Encl. 1N-10O) According to Barry Kamins's *New York State Search and Seizure*, a major exception to the warrant requirement is the "emergency doctrine." Under the doctrine, a police officer can enter a premises without a warrant to protect individuals in distress, to assist victims of crimes that have just occurred or to investigate suspicious signs of impending danger. The court has established, in *People vs. Mitchell*, 39 NY2d 173, 383 NYS2d 246 (1976), three basic requirements have to be met for the application of the emergency doctrine to apply: (1) the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property, (2) the search must not be primarily motivated by the intent to arrest, and (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area being searched. (Encl. 2A-2B)

§ 87(2)(g)

[REDACTED]

Allegation F: On January 13, 2006, SGT Carlos Fabara used physical force against § 87(2)(b)

§ 87(2)(b) alleged that after he observed SGT Fabara and PO Handlesman frisk three males, Sgt. Fabara approached and pushed him. SGT Fabara denied pushing § 87(2)(b). He stated that his interaction with § 87(2)(b) was initiated after the officers observed him fighting with an unidentified male in the street. § 87(2)(b) did admit that when he was about to be arrested by SGT Fabara and PO Handlesman, he slightly resisted by extending his arms to deflect the officers. As stated in Patrol Guide 203-11, officers must use the minimal amount of physical force necessary to effect an arrest. (Encl. 3A-3B)

§ 87(2)(g)

[REDACTED]

Allegation G: On January 13, 2006, PO Matthew Handlesman struck § 87(2)(b) with a radio.

Allegation H: On January 13, 2006, PO Matthew Handlesman used physical force against § 87(2)(b)

§ 87(2)(g)

[REDACTED]

Allegation I: On March 10, 2006, LT Jason Schleyer spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b) alleged that LT Schleyer called him a “fucking wiseass.” LT Schleyer and PO Cummings denied this occurred. § 87(2)(g)

[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: